

Indiana Public Defender Commission Meeting Minutes

October 5, 2006

Chairman Norman Lefstein called the meeting to order at 2:06 p.m. Commission members attending were: Susan Carpenter, Les Duvall, Bettye Lou Jerrel, and Sen. Timothy Lanane. Also attending was Larry Landis of the Indiana Public Defender Council, Michael Murphy and Deborah Neal, Staff Counsel for the Commission, and Amber Holland, recording secretary. Members not attending were Monica Foster, Ralph Foley, Judge Daniel Donahue, Sen. Joseph Zakas and Rep. Bob Kuzman.

Also in attendance: Bob Rittman, Grant County Managing Public Defender; Joseph Certain, Grant County Public Defender Board Member; Doug Long, Public Defender Madison County; Tim States, Madison County Court Administrator; David Cook, Marion County Chief Public Defender, and Debra Green, Marion County Public Defender Agency.

1. **Meeting Minutes:** Chairman Lefstein presented minutes from the July 13, 2006 Public Defender Commission meeting for approval. Bettye Lou Jerrel moved for approval and Les Duvall seconded the motion. Votes by attending members unanimously in favor of approval. Ralph Foley and Judge Donohue voted for approval by telephone.

2. **Proposed Task Force Studying Indigent Defense in Indiana:** Chairman Lefstein reports he is hopeful that the Commission will have a response soon from Chief Justice Shepard as to whether or not he wishes to proceed in organizing a task force to study indigent defense in Indiana, or in the alternative, defers to the Commission to proceed on its own.

3. **Claims for 50% Reimbursement in Capital Cases:** The Commission addressed claims for 50% reimbursement in capital cases as follows:

Reimbursement Requests in Capital Cases			
October 5, 2006			
COUNTY	DEFENDANT		TOTAL
Clark	Melcher		\$3,618.56
	Melcher	*	\$1,452.69
Lake	Aki-Khuam (Williams)		\$19,524.35
	Britt		\$26,303.30
	Jeter		\$101,973.34
Madison	Baer		\$4,104.19
Marion	Allen		\$4,971.99
	Allen 2		\$12,466.58
	Allen 3		\$24,618.75
	Voss		\$6,592.03
Morgan	Pruitt		\$4,702.95
Parke	Cottrell		\$3,051.40

Spencer	Ward		\$15,781.03
Tippecanoe	Gauvin		\$15,258.60
TOTAL			\$244,419.76
* The 7/13/06 request on Melcher contained an error in salary for lead counsel			
Of \$2,905.38 [50%=\$1,452.69] Request for reconsideration attached.			

Deborah Neal explained the mathematical error in the Melcher claim. Susan Carpenter moved to approve the capital claims, and Sen. Timothy Lanane seconded the motion. All Commission members present voted to approve; Ralph Foley voted for approval, by telephone, and Judge Donohue abstained from voting on this motion, by telephone. Motion passed.

Ms. Neal also reported that the list of attorneys qualified as lead, co-counsel, and appellate counsel in capital cases has been updated and will be published on the Website.

The Commission considered for approval a death penalty seminar sponsored by the Indiana Public Defender Council scheduled for November 8th through 11th, 2006, with 24 CLE credits available to participants. Susan Carpenter moved to approve this seminar for purposes of Criminal Rule 24's mandatory 12 continuing legal education credits required of capital defense attorneys; Sen. Timothy Lanane seconded the motion. All Commission members present voted to approve; Ralph Foley and Judge Donohue voted for approval of this motion by telephone. Motion passed

4. **Claims for 40% Reimbursement in Non-Capital Cases:** Chairman Lefstein invited questions or comments from guest present at the meeting.

Marion County: Dave Cook, Marion County Public Defender Chief, asked the amount of the 1st Quarter adjustment that would be granted to Marion County, and how was prorating of the 2nd Quarter requests calculated. First, Mike Murphy, staff counsel, informed Marion County that they would be receiving the amount requested [\$209,904.57] on the 1st quarter adjustment. Second, Mr. Murphy explained the percentage of prorating is based upon the ratio of available funds to the reimbursement requests. Dave Cook then asked what the adjustment percentage reflected on the 2nd quarter list of Request for Reimbursements represented. Mike Murphy explained that was the percentage that each county self-adjusted their request for reimbursement by excluding non-reimbursable expenses. The information should help the Commission decide what is "fair and reasonable" in determining if a county's self-adjustment of their request is appropriate.

Non-Capital Claims: Chairman Lefstein noted in review of the system that the Commission voted to implement at the last meeting, all of the participating counties, with the exception of six, are recommended for approval of their request for reimbursement on non-capital claims, at the percentage of available funds. The requests for reimbursement have been self-adjusted by the counties, with each presenting an explanation of how they arrived at their total non-reimbursable amounts. Mike Murphy explained that the percentage of self-adjustment by the counties ran from a high of 52% for non-reimbursable expenses, to figures as low as 3.3% and 4.4%. Mr. Murphy asked for guidance from the Commission as to what is going to be the threshold of what is a fair and reasonable self-adjustment by the counties, noting that if a county is not reporting all of their cases, or not adjusting in an appropriate fashion, it is penalizing other counties.

Grant County: The first example presented by Mike Murphy was Grant County. Mr. Murphy noted that Grant County reported handling 280 indigent defense cases appointed in the 2nd quarter. The statistics kept

by State Court Administration indicates there were 315 appointments made during the quarter in question. Additionally, Grant County claims expenses of \$161,572 and non-reimbursable of \$7,148. This is an adjustment of 4.4%. Bob Rittman from Grant County was invited to explain why the number of public defense cases he reported to the Commission differs with the reports submitted by Grant County courts to State Court Administration. He stated that often when one defendant has multiple cases, but is granted one public defender, it is reported as one case. He said the same thing happens on probation violation cases. Mr. Rittman said he gets his public defense case figures from the individual court reporters, not from the attorneys handling the cases, and that often the Court does not find defendants to be indigent on misdemeanor cases. Bettye Lou Jerrel asked if defendants were being properly advised on their right to counsel, and Mr. Rittman assured the Commission that all defendants were given the same information regarding constitutional rights.

Mr. Rittman further explained case assignment in Grant County is handled by contracting with the part-time attorneys for specific number of new case assignments; upon reaching their contract limit of cases, the contract attorneys may be appointed as counsel on new cases at an hourly rate of \$80. Also, appeals and murder cases are not considered contract cases, and are paid to assigned counsel at a rate of \$80. In figuring the percentage of non-reimbursable expenses, Rittman found that the misdemeanor cases were 13.57% of all the indigent defense cases; then, in figuring that misdemeanor cases would take half the time of a felony case, he reduced that 13.57% by half, and figured Grant County's non-reimbursable expenses at 6.79%. Mr. Rittman stated this was Grant County's first attempt to self-adjust its non-reimbursable cases, and if the Commission felt that figure was not fair and reasonable, then they were open to discussion.

Chairman Lefstein questioned Bob Rittman about Grant County's practice of contracting for indigent defense services and then offering appointment of cases on an assigned basis, at a rate of \$80 per hour, to defense attorneys who have reached their contract limit and wish to take more cases. Lefstein asked if any other counties have this structure for performing indigent defense services. Larry Landis stated yes, there were other counties doing what Grant County does, but maybe not to that extent.

After further discussion, it was determined that Grant County's non-reimbursable expenses were valued at 9.2% of their gross expenses, instead of the 6.79% reported. Susan Carpenter moved to approve Grant County at the revised 9.2% for the non-reimbursable expenditures. Sen. Timothy Lanane seconded the motion. All members present at the meeting voted in favor of the motion; Ralph Foley and Judge Donohue voted for approval of this motion by telephone. Motion passed.

Madison County: Tim States, Court Administrator in Madison County, addressed the Commission concerning changes to the Comprehensive Plan that Madison County is considering. The county is looking at four or five different systems across the state, and may want to implement a full-time defender system with additional contract counsel. Mr. States reports that Madison County would like to hire all full-time attorneys without private practices, but the county will not pay a salary that would encourage attorneys to take these positions. Chairman Lefstein told Mr. States that the Commission appreciates his attendance at the meeting; however, he does not believe this is the forum to address the specific kinds of questions related to Madison County. Mr. Lefstein said that staff members and Larry Landis would be glad to discuss these issues with representatives of Madison County.

Chairman Lefstein then directed the meeting back to the issue of non-capital claims. Mike Murphy stated there are five other counties (in addition to Grant), which are not being recommended for approval at this time. However, he does recommend deferral because the information submitted by these counties was not complete,

and the Commission needs to offer guidance as to a fair and reasonable threshold percentage of self-adjusting that counties should be making. Mr. Murphy stated he has had discussions with Floyd, Clark and Allen counties, and they are aware of the adjustments that need to be made. Their adjusted requests will be submitted at the 3rd quarter meeting.

Miami and Steuben counties have had difficulties reporting any non-reimbursable cases. Mr. Murphy will continue to work with these counties in order to submit an acceptable 2nd quarter request for reimbursement, at the 3rd quarter meeting in December.

Susan Carpenter moved to defer Allen, Clark, Floyd, Miami and Steuben's request for reimbursement until the next quarterly meeting. Sen. Timothy Lanane seconded the motion. All members present at the meeting voted in favor of the motion; Ralph Foley voted for approval of this motion by telephone. Judge Donohue voted for approval of this motion with the exception that he abstains from voting on Clark County. Motion passed.

Susan Carpenter then moved to approve the balance of the counties' 2nd quarter requests, including Grant County at the amended rate of 9.2%, and prorating appropriately in light of the change in Grant County. Bettye Lou Jerrel seconded the motion. All members present at the meeting voted in favor of the motion; Ralph Foley and Judge Donohue voted for approval of this motion by telephone, with Judge Donohue abstaining on the vote for Clark County. Motion passed.

Non-capital claims for the 2nd quarter of 2006 are to be paid as follows:

INDIANA PUBLIC DEFENDER COMMISSION					
<i>Second Quarter (April 1, 2006-June 30,2006) Requests for Reimbursements in Non-Capital Cases</i>					
Revised 10/9/2006					
County	Total Expenditures	Adjustment	Eligible Expenditures	40% Reimbursement	25.3% Prorated Reimbursement
Adams	\$54,090.96	\$11,387.57	\$42,703.39	\$17,081.36	\$10,803.96
Allen	\$623,499.54	\$21,179.10	\$602,320.44	\$0.00	\$0.00
Benton	\$11,394.55	\$1,035.87	\$10,358.68	\$4,143.47	\$2,620.75
Blackford	\$38,156.33	\$6,338.00	\$31,818.33	\$12,727.33	\$8,050.04
Carroll	\$40,729.48	\$16,643.87	\$24,085.61	\$9,634.24	\$6,093.66
Clark	\$109,179.40	\$8,156.23	\$101,023.17	\$0.00	\$0.00
Decatur	\$30,949.73	\$9,392.70	\$21,557.03	\$8,622.81	\$5,453.93
Fayette	\$78,582.30	\$16,111.02	\$62,471.28	\$24,988.51	\$15,805.23
Floyd	\$88,222.48		\$0.00	\$0.00	\$0.00
Fountain	\$19,552.47	\$5,831.44	\$13,721.03	\$5,488.41	\$3,471.42
Fulton	\$49,609.17	\$21,797.97	\$27,811.20	\$11,124.48	\$7,036.23
Grant	\$161,572.76	\$14,864.69	\$146,708.07	\$58,683.23	\$37,117.14
Greene	\$62,380.68	\$10,661.52	\$51,719.16	\$20,687.66	\$13,084.95
Hancock	\$100,843.99	\$27,955.73	\$72,888.26	\$29,155.30	\$18,440.73
Henry	\$99,247.34	\$18,505.98	\$80,741.36	\$32,296.54	\$20,427.56
Jasper	\$40,820.00	\$14,332.36	\$26,487.64	\$10,595.06	\$6,701.37
Jay	\$54,012.03	\$10,153.20	\$43,858.83	\$17,543.53	\$11,096.28
Jennings	\$62,106.96	\$17,744.85	\$44,362.11	\$17,744.84	\$11,223.61
Knox	\$146,350.70	\$43,870.11	\$102,480.59	\$40,992.24	\$25,927.59

Kosciusko	\$114,074.24	\$39,702.31	\$74,371.93	\$29,748.77	\$18,816.10
Lake	\$934,365.65	\$0.00	\$934,365.65	\$373,746.26	\$236,394.51
LaPorte	\$122,478.85	\$16,2120.44	\$106,268.41	\$42,507.36	\$26,885.91
Madison	\$407,456.92	\$43,369.26	\$364,087.66	\$145,635.06	\$92,114.18
Marion	\$3,326,346.57	\$702,113.18	\$2,624,233.39	\$1,049,693.36	\$663,931.05
Martin	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Miami	\$74,802.00	\$0.00	\$74,802.00	\$0.00	\$0.00
Monroe	\$292,346.96	\$105,667.37	\$186,679.59	\$74,671.84	\$47,229.94
Montgomery	\$48,375.35	\$15,427.34	\$32,948.01	\$13,179.20	\$8,335.85
Newton	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Noble	\$81,665.64	\$14,418.71	\$67,246.93	\$26,898.77	\$17,013.47
Ohio	\$14,397.00	\$2,721.00	\$11,676.00	\$4,670.40	\$2,954.03
Orange	\$49,953.93	\$14,934.68	\$35,019.25	\$14,007.70	\$8,859.87
Parke	\$24,667.71	\$7,928.91	\$16,738.80	\$6,695.52	\$4,234.92
Perry	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Pike	\$62,958.00	\$30,159.64	\$32,798.36	\$13,119.34	\$8,297.99
Pulaski	\$63,401.07	\$26,481.53	\$36,919.54	\$14,767.82	\$9,340.64
Rush	\$43,595.45	\$14,531.82	\$29,063.63	\$11,625.45	\$7,353.10
Scott	\$48,600.56	\$14,940.81	\$33,659.75	\$13,463.90	\$8,515.92
Shelby	\$68,336.70	\$7,212.00	\$61,124.70	\$24,449.88	\$15,464.55
Spencer	\$14,892.85	\$2,769.00	\$12,123.85	\$4,849.54	\$3,067.33
Steuben	\$53,526.44	\$0.00	\$53,526.44	\$0.00	\$0.00
Sullivan	\$26,758.71	\$13,913.60	\$12,845.11	\$5,138.04	\$3,249.81
Switzerland	\$48,960.82	\$7,142.00	\$41,818.82	\$16,727.53	\$10,580.16
Tippecanoe	\$368,847.57	\$84,663.48	\$284,184.09	\$113,673.64	\$71,898.57
Union	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Vanderburgh	\$423,359.52	\$75,840.82	\$347,518.70	\$139,007.48	\$87,922.23
Vermillion	\$23,976.52	\$6,083.59	\$17,892.93	\$7,157.17	\$4,526.91
Vigo	\$321,107.00	\$91,343.52	\$229,763.48	\$91,905.39	\$58,130.16
Warren	\$8,141.56	\$1,382.73	\$6,758.83	\$2,703.53	\$1,709.98
Washington	\$71,867.86	\$27,419.46	\$44,448.40	\$17,779.36	\$11,245.45
Wells	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
White	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Whitley	\$39,155.42	\$16,611.39	\$22,544.03	\$9,017.61	\$5,703.64
TOTAL	\$9,049,717.74	\$1,658,950.80	\$7,390,766.94	\$2,588,348.93	\$1,637,130.72

5. **Request for Reconsideration of 1st Quarter Reimbursement in Non-Capital Requests:** In accordance with the action taken at the 2nd Quarter meeting, allowing counties to resubmit their 1st Quarter Request for Reconsideration with figures attained by using the county's own method of determining the amount of non-reimbursable expenditures (as opposed to the formula used by the Commission staff). Four counties submitted amended requests in the following adjusted amounts: Hancock County - \$10,944.05; Marion County - \$209,904.57; Ohio County - \$2,363.30; and Switzerland County - \$2,135.83. The total 1st quarter amended requests is \$225,347.75. Mike Murphy reported that each of these counties had been refigured, reduced for misdemeanor cases, and should be paid at 40%. Bettye Lou Jerrel made the motion to approve the reconsideration at the full 40% rate. Susan Carpenter seconded the motion. All Commission members present voted to approve; Ralph Foley and Judge Donohue voted for approval of this motion by telephone. Motion passed.

6. **Howard County Comprehensive Plan:** Mike Murphy, staff counsel, reported he had made several trips to Howard County to assist them in forming their Comprehensive Plan; Howard County understands completely the system of a public defender office with part-time salaried public defenders. He also noted that the county intends to join the program with all their attorneys in full compliance with Commission standards. Susan Carpenter made a motion to approve Howard County's Comprehensive Plan, and Les Duvall seconded the motion. All Commission members present voted to approve; Ralph Foley and Judge Donohue voted for approval of this motion by telephone. Motion passed

7. **Comparison of 1st Quarter to 2nd Quarter Non-capital Requests for Reimbursement:** Chairman Lefstein stated the comparison figures show what is happening with the new system of having the counties declare the amount of their non-reimbursable expenditures. He noted that the total of the counties' reported expenses were actually much higher than the 1st quarter. Mike Murphy stated that he had visited 17 counties during the quarter, explaining the new system, and stressing that all expenses must be reported, which would cause an increase in total expenses reported. It was noted that several counties adjusted their request by a much higher percentage of non-reimbursable expenses than the formula. Mike Murphy stated he was monitoring the percentage of adjustment, and if it is below 10%, will contact the county to see if everything is being reported.

8. **Form Revisions to Request for Reimbursement in Non-capital Cases – Provision of Data to Support Use of "Adequate Support" Classifications.** Mike Murphy discussed the counties that use the caseload worksheets having standards for part-time attorneys with "adequate support." These worksheets allow for higher maximum caseloads. The problem is the reports from the counties using these sheets does not indicate that sufficient staff is employed by the agency to support the "adequate" designation. Mr. Murphy said instead of revising the form, the staff would contact the counties using these "adequate support" worksheets, and tell them if they intend to continue to use these worksheets to please give us the documentation to support it.

9. **Requiring Statutory, Standard and Comprehensive Plan Compliance.** There was discussion among Commission members and staff regarding partial reporting of indigent expenses by counties in the program, and the issue of civil cases that receive an attorney at public expense. On the question of Comprehensive Plans including all courts in a county, the Commission members present agreed that all courts are included in each Plan. On the question of should a county's Request for Reimbursement include all expenditures in the county spent on behalf of indigent defense, the Commission members present agreed that all expenditures should be part of the Request. As to whether a county auditor is required to certify the total amount spend on indigent defense in the county to the Commission; the members present suggested that a guideline should be developed to address this matter. Several members of the Commission had left before this last agenda item was discussed; therefore, no final resolutions were passed.

Meeting adjourned at 5:16 p.m.

Norman Lefstein, Chairman

Date